

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Agency)	
)	ICC Docket No. 13-0546
Petition for Approval of the 2014 IPA)	
Procurement Plan Pursuant to Section 16-)	
111.5(d)(4) of the Public Utilities Act)	

**VERIFIED REPLY BRIEF ON REHEARING (PUBLIC)
ON BEHALF OF THE ILLINOIS POWER AGENCY**

The Illinois Power Agency (“IPA” or “Agency”), by and through its attorney, respectfully submits its Verified Reply Brief on Rehearing pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission”) Rules (83 Ill. Admin Code. § 200.800).

As an initial matter, in its Initial Brief on Rehearing, the Agency supported the Renewables Suppliers’ (“RS”) secondary proposal, provided that only hourly ACP funds were used and that the Commission adopted a system to account for the appropriate purchase price. (*See* IPA Initial Brief on Reh’g at 11-13.) The IPA has reviewed the Initial Briefs on Rehearing of Staff, the RS, Ameren, and ComEd, and nothing in those Initial Briefs has caused the IPA to change its position. The Agency continues to recommend that the Commission accept the RS’s secondary proposal.

Having reviewed the parties’ Initial Briefs on Rehearing, the Agency remains opposed to the RS’s primary proposal that the Commission prevent any curtailment of energy from the long-term renewable resource PPAs procured by the IPA in December, 2010 (“LTPPAs”). The Agency provided substantial support for its opposition in its Initial Brief on Rehearing. (*See* IPA Initial Brief on Reh’g at 4-11.) Primary among those reasons included:

- Making energy uncurtailable under the LTPPAs would cause significant harm to the IPA procurement process and would violate the Public Utilities Act, because such a move would require rewriting the LTPPAs. (*See id.* at 4-6.)

- Eligible retail customers have lost money on the energy cost recovery mechanism in the LTPPAs to date, and thus it would not be in eligible retail customers' interest to reverse a curtailment that could mitigate those losses. (*See id.* at 6-7.)
- Contrary to the position of the RS, other factors besides energy curtailment of now-existing facilities are hindering new renewable energy development in Illinois. (*See id.* at 8-11.)

In light of arguments raised by other parties, the IPA wishes to provide additional background for the Commission.

First and foremost, the RS's argument that making energy uncurtailable would not require a change in the LTPPA contracts lacks merit. Specifically, the RS argue:

The Renewables Suppliers recognize that the above-quoted provision specifies a default method for implementing curtailments, by reducing the quantity of 'Product' purchased under the LTPPAs. However, the default method is conditioned by 'unless otherwise directed by the Illinois Commerce Commission.' The Renewables Suppliers are seeking to have a different method of implementing curtailments 'directed by the Commission.'

(RS Initial Brief on Reh'g at 31-32 (internal citation omitted).) This misreads the LTPPAs. The quoted contract language prevents Ameren and ComEd from unilaterally curtailing Product without Commission approval to do so. However, if in the process of setting the terms of the curtailment the Commission changes the definition of "Product" to divorce RECs and energy, the Commission would certainly be changing a key term of the LTPPA. If "unless otherwise directed by the Illinois Commerce Commission" allows changing contract terms, as the RS argue, the RS could conceivably ask for (and receive) changes to the price paid by eligible retail customers for non-curtailed energy. Such an approach would raise significant policy and statutory compliance concerns as addressed extensively in the Agency's Initial Brief. (*See* IPA Initial Brief on Reh'g at 4-6.)

Second, the LTPPA counterparties knew or should have known that curtailment was possible. ComEd's Initial Brief on Rehearing provides substantial support for the proposition

that the RS knew or should have known that energy would be curtailable when they bid on the LTPPAs. (*See* ComEd Initial Brief on Reh’g at 7-10.) Indeed, Commissioner Elliott’s dissent raised the potential issue of “stranded costs” under the LTPPAs due to customer migration. (*See* ICC Docket No. 09-0373, Dissenting Opinion dated February 2, 2010 at 7.) In litigation of the IPA’s 2011 Procurement Plan—and before the LTPPA procurement—ComEd argued that 50% of eligible retail customers may leave bundled service (although at least one current member of the RS rejected that argument). (*See* ICC Docket No. 10-0563, Final Order at 68 (ComEd concern), 56 (Iberdrola opposition).)

The IPA recommends that the Commission adopt the RS’s secondary proposal (subject to the caveats identified by the IPA in its Initial Brief on Rehearing) but reject the primary proposal. This will allow the LTPPA counterparties to make up for lost revenue without causing severe damage to the IPA procurement process. The IPA notes that it was satisfied with the administrative methodology proposed by the RS in their rebuttal testimony. (*See* RS Exhibit 1.2 at 9-10.) Finally, the IPA notes that this Rehearing only touches on broader questions of renewable development in Illinois identified in the IPA’s Initial Brief on Rehearing, and urges the Commission to begin a wider discussion—in which the IPA will fully participate—to maximize benefits of the Illinois Renewable Portfolio Standards, as the General Assembly intended.

Dated: May 2, 2014

Respectfully submitted,

Illinois Power Agency

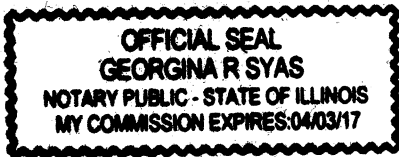
By: /s/ Brian P. Granahan

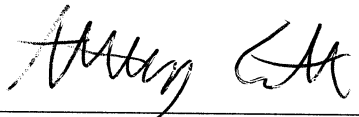
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STATE OF ILLINOIS)
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COUNTY OF COOK)

VERIFICATION

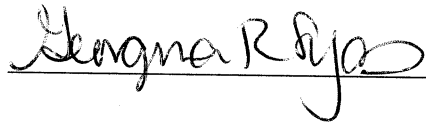
Anthony M. Star, being first duly sworn, on oath deposes and says that he is the Director for the Illinois Power Agency, that the above Reply Brief on Rehearing on Behalf of the Illinois Power Agency has been prepared under his direction, he knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.





Anthony M. Star

Subscribed and sworn to me
This 2nd day of May, 2014



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NOTICE OF FILING

Please take notice that on May 2, 2014, the undersigned, an attorney, caused the Reply Brief on Rehearing on Behalf of the Illinois Power Agency to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission in the above-captioned proceeding:

May 2, 2014

/s/ Brian P. Granahan
Brian P. Granahan

CERTIFICATE OF SERVICE

I, Brian P. Granahan, an attorney, certify that copies of the foregoing document(s) were served upon the parties on the Illinois Commerce Commission's service list as reflected on eDocket via electronic delivery from 160 N. LaSalle Street, Suite C-504, Chicago, Illinois 60601 on April 25, 2014.

/s/ Brian P. Granahan
Brian P. Granahan